DAVID J. TIMBERLIN

IBLA 2000-263 Decided January 7, 2003

Appeal from a decision and cessation order of the Safford, Arizona, Field Office, Bureau of Land Management, finding a violation of 43 CFR Subpart 3715 and directing the cessation of occupancy of the mining site, the removal of mining equipment, and the reclamation of the site. AZA 29006.

Affirmed in part and reversed in part.

1. Mining Claims: Surface Uses

The regulations at 43 CFR Subpart 3715 apply to the use and occupancy of mining claims in existence on the Aug. 15, 1996, effective date of the regulations, and BLM properly relied on those regulations even though the affected claims, while extant on Aug. 15, 1996, had subsequently been forfeited for failure to pay the required claim maintenance fee.

2. Mining Claims: Surface Uses

A BLM decision holding the president of a defunct corporation personally liable for reclamation of a mine site formerly operated by the corporation will be reversed where BLM has not shown that the corporate veil should be pierced.

APPEARANCES: David J. Timberlin, Phoenix, Arizona, pro se; Richard R. Greenfield, Esq., Office of the Field Solicitor, U.S. Department of the Interior, Phoenix, Arizona, for the Bureau of Land Management.

OPINION BY DEPUTY CHIEF ADMINISTRATIVE JUDGE HARRIS

David J. Timberlin has appealed the April 27, 2000, decision and cessation order (decision) issued by the Safford, Arizona, Field Office, Bureau of Land Management (BLM), finding him in violation of 43 CFR 3715.5(a) and 3715.5-1 for his failure to remove equipment owned by Dominion International Corporation (Dominion) from the Cody lode mining claims and to reclaim ground disturbances on the claims. BLM directed

Timberlin to cease storage on the claims of a rock crusher and other items, remove them within 90 days of receipt of the decision, and begin full reclamation of the site.

The Cody 1 through 8 (AMC 329278 through 329285) and the Cody 21 and 22 (AMC 329286 and 329287) lode mining claims, located by Manuel Hernandez, embrace lands in secs. 20, 21, 28, and 29, T. 14 S., R. 27 E., Gila & Salt River Meridian, Cochise County, Arizona. According to the case record, the initial operations on the claims were conducted under a February 28, 1994, notice, filed pursuant to 43 CFR 3809.1-3, which named Jon Stewart as the operator.

On May 11, 1994, BLM issued a notice of noncompliance to Stewart and Hernandez, finding that their unauthorized building of access routes and clearing of a half-acre rock crushing/hauling area on public lands violated 43 CFR Subpart 3809, and directing them to reclaim unnecessary spur roads and to submit a detailed mining plan of operations and associated reclamation plan in accordance with 43 CFR 3809.1-4 and 3809.1-5. The plan of operations filed with BLM on January 18, 1995, as modified by a February 9, 1995, addendum, listed the joint operators as Jon A. Stewart, American Lime & Materials Co., Inc. (American Lime), and E.D. Goodloe, Western Mountain, Inc., and described the project's purpose as providing gold-bearing silica flux to smelters in the area.

By letter dated June 1, 1995, Goodloe and Stewart advised BLM that Hernandez had authorized Dominion, an Arizona corporation in good standing, to mine and work the Cody claims; that Goodloe had been retained as Dominion's General Manager; and that pursuant to an agreement with American Lime, Dominion was now the sole operator of activities on the claims, designated as the Cody Project. Appended to the letter were two items: a notice from the Arizona Corporation Commission attesting to the April 4, 1995, filing of Dominion's articles of incorporation and the minutes of a May 29, 1995, special meeting of Dominion's directors designating Goodloe as the corporation's General Manager and identifying Timberlin and Roger Lindsey as Dominion's directors.

On June 14, 1995, BLM issued a notice of noncompliance to Stewart and Goodloe, identifying additional unauthorized activities on the Cody claims and directing, among other things, that Dominion file a $20,000 bond. Dominion filed the requisite bond, which Timberlin signed as the corporation's president, on June 19, 1995. On June 20, 1995, Goodloe, on behalf of Dominion, filed with BLM a mining plan, dated June 15, 1995, identifying Stewart as the mining engineer for the Cody Project, indicating that reclamation of the public lands would occur at the end of the mine life, and binding Dominion explicitly to reclaim all disturbances on public lands created by the corporation. BLM approved Dominion's plan of operations on July 19, 1995.

By letter dated October 6, 1995, BLM advised Goodloe that some "undue and unnecessary degradation" had occurred on the Cody claims, specifically an accumulation of trash unrelated to mining activity, including an old refrigerator. By letter dated October 30, 1995, Lindsey, identified as

Dominion's vice president, advised BLM that Goodloe had died on October 10, 1995; that the general manager position was currently vacant; that all official notices and communications should be directed to Timberlin, Dominion's president; and that Robert Weir would oversee on-site operations.

By letter dated March 22, 1996, BLM advised Lindsey of various concerns following its March 13, 1996, visit to the mining operation, including debris and litter strewn on the site, a new large piece of mining equipment stored on site, the proposed disposal of another piece equipment needed to reclaim the unnecessary spur roads and other surface disturbances, and Dominion's failure to comply with a stipulation of approval of the mine plan related to state-protected plants in the mine area.

According to various Conversation Records in the case file, BLM communicated with Lindsey throughout 1996 and early 1997 about activities and conditions on the claims. 1/ On March 31, 1997, BLM issued a decision declaring the Cody claims forfeited and null and void, effective August 31, 1996, for failure to pay the claim maintenance fees required by 30 U.S.C. § 28f (2000). 2/

By letter dated November 10, 1997, Timberlin informed BLM that Dominion’s interests in the Cody Project and other claims had been purchased by the Mining and Development Company of the Southwest (Southwest), and that Robert Bliss, Southwest’s president, would be contacting BLM to make arrangements to complete the necessary paperwork for his company to assume all of Dominion’s obligations for mining the project. By letters dated January 7, 1998, and July 2, 1998, BLM advised Timberlin that Bliss had not yet notified BLM that Southwest had accepted reclamation responsibility for the Cody Project or obtained the required reclamation bond and that, until he did so, reclamation responsibility for the Cody Project remained with Dominion.

Timberlin responded to BLM by letter dated July 8, 1998, advising BLM that Dominion had filed its final tax returns and no longer existed as an operating company and attaching a copy of the October 9, 1997, purchase agreement documenting the sale of Dominion’s equipment, assets, and mining rights to Southwest. Pursuant to the purchase agreement, Southwest obtained the equipment personally owned by Timberlin listed in Exhibit A,

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1/ The only reference to Timberlin during this period is in a Conversation Record dated Feb. 28, 1997, where BLM documents a statement by Lindsey that Timberlin was Dominion's majority stockholder.

2/ Although the record does not contain a copy of this decision, BLM alludes to it on page 12 of its Reply to the Board's Jan. 26, 2001, order granting a temporary stay of BLM’s decision and requesting clarification regarding the basis for its decision. The record does include a copy of page 3171 of the Aug. 20, 1998, BLM "CLAIM NAME/NUMBER INDEX," which lists, inter alia, the Cody 1 through 8 (AMC Nos. 329278 through 329285), the Cody 21 (AMC No. 329286), and the Cody 22 (AMC No. 329287) mining claims and has the date "8/31/96" entered for each claim under the category "CASE CLOSED."

including two crushers and a "bone yard" consisting of various spare parts and equipment; the mining rights owned by Dominion identified in Exhibit B, encompassing, among others, interests in the Cody claims and the patented Honey Dew claims; 3/ and the licenses and permits related to the equipment

and mining rights owned by either Timberlin or Dominion enumerated in Exhibit C, including state and county air quality permits and BLM mining-related permits. Exhibit C further provided that "[i]t is understood that all responsibilities and abligations [sic] that may be required by the Bureau of Land Management after closing will become the responsibility of the Purchaser." Timberlin signed the purchase agreement twice, once as an individual seller and once as president of Dominion; Lindsey signed as Dominion's vice president; and Bliss signed as Southwest's president. 4/

On February 8, 2000, Bliss filed with BLM a copy of the termination agreement signed by Herbert Lucas, president of Sandhill, formerly known as Southwest (see note 4, supra), and Timberlin in December 1999. That agreement terminated the sale of the equipment set forth in Exhibit A to the October 9, 1997, purchase agreement and returned title to that equipment to Timberlin. The agreement also stated that Timberlin released Sandhill from any further obligations pursuant to the purchase agreement and the April 5, 1998, promissory note to him. By letter dated March 3, 2000, BLM advised Timberlin that, based on the termination agreement and other evidence in the record, including Goodloe's and Stewart's February 9, 1995, statement that "[w]e also bind ourselves that al [sic] disturbances made by us on public lands will ultimately be reclaimed," it considered Timberlin responsible for reclamation of the Cody claims and directed him to provide his reclamation plans within 15 days.

In its April 27, 2000, decision, BLM recited the history of the operations on the Cody claims, the statement made by Goodloe and Stewart in the January 9, 1995, plan of operations that "[a]ll roads, trenches and any other disturbances on BLM surface that are nonessential to the Cody operation will be completely restored and reseeded to BLM specifications," and their commitment in the February 9, 1995, addendum to that plan that "we also bind ourselves that al [sic] disturbances made by us on public lands will be ultimately reclaimed." BLM added that the June 1995 plan of operations identifying Dominion as the sole operator of the Cody claims had also

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3/ The record contains a copy of a Mar. 19, 1998, Unanimous Consent to Action of the Board of Directors of Dominion, signed by Timberlin and Lindsey, authorizing Timberlin, as Dominion's president, to execute the attached lease assignment transferring Dominion's interests in the Honey Dew lode mining claim to Southwest.

4/ The record indicates that, after receiving Timberlin's letter and the copy of the purchase agreement, BLM shifted its reclamation enforcement focus to Bliss and Southwest, which had been renamed Sandhill Holding Incorporated (Sandhill), culminating in the issuance, on Oct. 1, 1999, of a "Decision Notice of Noncompliance/ Cessation Order" to Bliss, charging him and Sandhill with violations of 43 CFR Subparts 3715 and 3809 for failure to file the required bond and to comply with applicable Federal and state

specified that final reclamation of the public lands would be performed at the end of mine life. BLM summarized the status of the Cody Project as of July 1998 when Timberlin advised the agency of the October 9, 1997, purchase agreement and of Dominion's demise, as follows:

> By this time all mining activity on the Cody Project had long since ceased and the Cody lode mining claims had become inactive due to lack of maintenance on them. All mining equipment except for a large crusher had been removed from the site, leaving the crusher and a lot of miscellaneous pieces of mining equipment to be removed, as well as numerous ground disturbances to be reclaimed (virtually none ever was).
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> These ground disturbances on public lands include a switch-backed road going from the crusher area to the patented Honeydew mining claim, cleared areas in the vicinity of the crusher, spur roads on the south and west sides of the Honeydew claim, and trenches placed adjacent to the pre-existing road going up Walnut Canyon. By this time, the Safford Office of the BLM had issued two Notices of Noncom-pliance to the operators of the Cody Project, dated May 11, 1994 and June 14, 1995 for conducting ground disturbing activities without authorization (and to this day, virtually none of those disturbances are reclaimed). The 1994 notice was issued to Jon Stewart and the claimant Manuel Hernandez, and the 1995 Notice was issued to Jon Stewart and E.D. Goodloe.

(Decision at 2, ¶ 7.) BLM further noted that, according to the termination agreement, Timberlin had released Sandhill from any further obligations under the purchase agreement.

Given that all the mining claims were void, most of the mining equipment was gone, and Dominion no longer existed as a corporate entity, BLM found that the Cody mining venture had terminated and that Timberlin was therefore in violation of 43 CFR 3715.5(a) and 3715.5-1 for his "failure to have caused the removal of Dominion's equipment and reclamation of the ground disturbances that Dominion committed itself to performing."

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fn. 4 (Continued)
environmental standards and the approved mining plan, and directing him within 30 days to either file the requisite bond or provide evidence that the Cody Project had been sold and all BLM-required responsibilities and obligations transferred. BLM also informed Bliss that if he failed to timely cure the noncompliance, he would be ordered to cease the on-site storage of the rock crusher and begin reclamation of the site. On Mar. 2, 2000, as a result of additional information from Bliss, including a copy of a December 1999 termination agreement, rescinding at least part of the Oct. 9, 1997, purchase agreement, BLM postponed the time frames set forth in its Oct. 1, 1999, decision while it pursued Timberlin to resolve the outstanding issues related to the Cody Project.

(Decision at 3.) BLM ordered Timberlin to cease the on-site storage of the rock crusher and all the debris in the area related to the Cody Project, including the "bone yard" of miscellaneous scrap material listed in Exhibit A of the purchase agreement and to remove that material within 90 days after receipt of the decision. BLM also directed Timberlin to begin reclamation of the site by removing all the material mentioned earlier, recontouring all the previously identified disturbed areas as much as reasonably possible to original grade, and seeding those areas. BLM required full reclamation within 90 days from delivery of the decision.

On appeal, Timberlin denies that he ever assumed personal responsibility for any of the activities on the Cody claims. He avers that he was a director of Dominion only because he was one of its major investors; that he signed various documents, not as an individual, but solely in his capacity as Dominion's president; that he never took an active part in Dominion's mining activities; and that neither the May 1994 nor the June 1995 notice of noncompliance cited in BLM's decision was issued to him as an individual claiming responsibility for the activities.

Timberlin elaborates on his personal connection to the purchase and termination agreements, explaining that

> all the major equipment was owned by a personal bill of sale by Roger [Lindsey] and I, as investors and [we] loaned it to Dominion for use in the mining operation. Noneofthis equipment was ever the property of Dominion. Itwas to be transferred to Dominion once the Royalties received as investors was [sic] paid to us in an amount equal to the purchase price or value. The fact is that RogerandInever received the first dollar because there was [sic]never anysales. * * * It also should be noted that intheTermination of Agreement *** the only things returned to David Timberlin was his original personal property that was sold to Sandhill in the form of equipment listed in "Exhibit A." This was done only because Sandhill defaulted on the original note issued for the purchase of the equipment.
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> * * * [I]f you read the Termination Agreement carefully, you will see that this agreement has reference to the equipment only. There is no mention in paragraph three of the termination agreement of anything except the equipment and the termination of Sandhill's obligation to continued payment of the promissory note for said equipment and the note issued to cover its cost.

(Statement of Reasons at 1-2, ¶¶ 7 and 8.) Accordingly, Timberlin maintains that, although he was associated with Dominion after Goodloe's death, at no time did he sign anything or imply that he was taking on any of Dominion's obligations for the corporation's past acts.

In its answer, BLM disputes Timberlin's assertion that he never signed any document assuming individual responsibility for the occupancy of the Cody claims. While acknowledging that Timberlin did not sign the pre-June 15, 1995, documents confirming Dominion's predecessors' creation of the unreclaimed surface disturbances at issue, BLM points to the October 30, 1995, letter stating that Timberlin was Dominion's president, the continuation of Dominion's reclamation bond during Timberlin's tenure as the corporation's president, and his execution of the termination agreement which, according to BLM, rescinded the purchase agreement's transfer of liability for the claims to Sandhill, as evidence of his personal accountability for Dominion's occupancy of the claims. BLM argues that, to the extent Timberlin's appeal may be construed as challenging the applicability of 43 CFR Subpart 3715, those regulations cover the storage of equipment and other materials left without authorization and, as duly promulgated regulations, have the force and effect of law and are binding on the Department and affected persons.

In response, Timberlin repeats that he had very little direct knowledge of any of the operations occurring prior to October 1, 1995, because his primary interest up to that point was as an investor in the mining equipment, and that it was Goodloe's death which forced him to become involved. He disputes BLM's construction of the termination agreement as rescinding the entire purchase agreement, pointing out that the purchase agreement included three distinct parts: Exhibit A, describing the equipment personally owned by him; Exhibit B, including the lease, mining claim, contract, agreement, and other interests owned by Dominion; and Exhibit C, identifying the air quality and mining-related permits and licenses held by Dominion and the corporation's responsibility for any BLM requirements.

Timberlin maintains that when Sandhill discontinued its payments for the equipment listed in Exhibit A, he and Sandhill negotiated Sandhill's return of the equipment in settlement of the remaining note obligation and memorialized that compromise in the December 1999 termination agreement, which provided that Sandhill would return the equipment to Timberlin and that Timberlin would cancel the remaining unpaid balance on the original note and release Sandhill from any further obligation to make the payments on the note required by the purchase agreement.

Timberlin insists that he never gave serious consideration to canceling the entire purchase agreement, that the correspondence leading up to the termination agreement did not mention Exhibits B and C to the purchase agreement, and that Exhibits B and C would have been cited in the termination agreement if that agreement had rescinded the entire purchase agreement. He further contends that, in light of Dominion's execution of the purchase agreement, its failure to sign the termination agreement, coupled with the lack of any documentation that Sandhill sought to return the leasehold and mining claim interests set out in Exhibits B and C, signify that none of the interests Dominion transferred pursuant to

Exhibits B and C was affected by the termination agreement and remained Sandhill's property and obligations. 5/

In reply, BLM maintains that it has established Timberlin's responsibility for the occupancy at issue, citing once again Dominion's June 15, 1995, explicit commitment to reclaim all the disturbances it made on public lands, most of which, BLM avers, occurred without the requisite notice or authorization, including some created while Timberlin was one of Dominion's directors, and Timberlin's status as Dominion's president during part of the period Dominion's reclamation bond was in effect. BLM contends that Timberlin has not denied that he was Dominion's chief operating officer when the corporation explicitly undertook reclamation responsibility for the degradation created by the Cody Project or that Dominion's reclamation bond was canceled during his tenure as the corporation's president. BLM disputes Timberlin's limited construction of the scope of the 1999 termination agreement, relying on a January 5, 2000, letter from Bliss (BLM Reply, Exhibit C), indicating that neither he nor Sandhill was currently responsible for anything related to the purchase agreement, and a November 1, 1999, letter from Sandhill's attorney (BLM Reply, Exhibit D), advising BLM that control and responsibility for the crusher was with Dominion, not Sandhill, and that BLM should direct its request for removal of the crusher to Dominion.

BLM discounts the significance of the termination agreement's omission of any reference to Exhibits B and C and Dominion's absence as a signatory to that agreement, asserting that little evidence exists that any of the assets listed in Exhibits B and C still survive, that the termination agreement fails to explicitly state that Sandhill's release from further obligations under the purchase agreement and promissory note relates only to Exhibit A, and that nothing in the record indicates that Timberlin was precluded from signing the termination agreement both personally and on behalf of the no longer extant Dominion. In sum, BLM maintains that the reclamation responsibilities at issue have not been properly transferred to another party and remain with Timberlin. 6/

By order dated January 26, 2001, the Board, sua sponte, questioned whether 43 CFR Subpart 3715 applied here, given that the Cody mining claims no longer exist, and directed BLM to clarify the authority under which it sought the removal of the equipment and reclamation of the disturbed areas. In response, BLM asserts that, because the original entry onto the affected

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5/ Timberlin also objects to BLM's reference to Cupp's Industrial Supply, Inc. (Cupp's), as an appellant in the appeal, stating that Cupp's never had any interest in this matter. BLM agrees that Cupp's is not a party to this appeal, explaining that Timberlin's use of Cupp's letterhead in various communications prompted BLM's erroneous inclusion of that entity.

6/ While acknowledging that it could pursue Hernandez, the mining claimant, for the reclamation, BLM notes that Dominion explicitly assumed that responsibility and that Hernandez was not involved with Dominion's operations.

public lands occurred under the mining laws and the regulations, by their own terms, apply to pre-existing occupancies, 43 CFR Subpart 3715 controls the occupancy at issue here, regardless of whether the underlying claims currently exist.

[1] Section 4(a) of the Surface Resources Act of July 23, 1955, 30 U.S.C. § 612(a) (2000), provides that claims located under the mining laws of the United States "shall not be used, prior to issuance of patent therefor, for any purposes other than prospecting, mining or processing operations and uses reasonably incident thereto." On July 16, 1996, BLM adopted 43 CFR Subpart 3715, which implements this statutory provision by addressing the unlawful use and occupancy of unpatented mining claims for nonmining purposes. See 61 FR 37115, 37117 (July 16, 1996). These regulations, which were effective August 15, 1996, set forth restrictions on the use and occupancy of public lands administered by BLM open to the operation of the mining laws, limiting such use and occupancy to those involving prospecting, exploration, mining, or processing operations and reasonably incident uses. They also establish procedures for beginning occupancy, standards for reasonably incident use or occupancy, prohibited acts, and procedures for inspection and enforcement and for managing existing uses and occupancies. 61 FR 37116 (July 16, 1996). Additionally, the regulations clarify that unauthorized uses and occupancies on public lands are illegal uses that ipso facto constitute unnecessary or undue degradation of public lands which the Secretary of the Interior is mandated by law to take any action necessary to prevent. 61 FR 37117-18 (July 16, 1996); see 43 U.S.C. § 1732(b) (2000). 7/

Regulation 43 CFR 3715.4 explicitly specifies that the use and occupancy regulations found in 43 CFR Subpart 3715 apply to uses or occupancies existing on the August 15, 1996, effective date of those regulations. See Bradshaw Industries, 152 IBLA 57, 61-62 (2000); 8/ see also Robert C. LeFaivre, 155 IBLA 137, 139-40 (2001) (holding that occupancy of eight millsite claims determined to be null and void in 1997 remained authorized under 43 CFR 3715.4(b) until Aug. 18, 1997). The Cody claims were not voided until August 31, 1996, 16 days after the August 15, 1996, effective date of 43 CFR Subpart 3715, and thus were subject to those

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7/ The preamble explains that the unnecessary or undue degradation controlled by these rules includes uses not authorized by law, specifically those activities which are not reasonably incident and are not authorized under any other applicable law or regulation, while uses that are reasonably incident and do not involve occupancy are governed by the surface management requirements of 43 CFR Part 3800. 61 FR 37118 (July 16, 1996).

8/ Although the Board in Bradshaw indicated that those regulations applied to the use or occupancy of mining claims in existence when the regulations were published, we clarify that holding to reflect that the Aug. 15, 1996, effective date of 43 CFR Subpart 3715, rather than the July 16, 1996, publication date of those regulations is the critical date for determining whether the use or occupancy of an unpatented mining claim falls within the ambit of those regulations.

regulations. Accordingly, we find no error in BLM's application of 43 CFR Subpart 3715 to the occupancy at issue here.

BLM's decision found Timberlin in violation of 43 CFR 3715.5(a) and 3715.5-1. Under 43 CFR 3715.5(a), a use or occupancy must be reasonably incident to prospecting, mining, or processing operations and must not create unnecessary or undue degradation of public lands and resources. Occupancy includes the "storage of equipment or supplies." 43 CFR 3715.0-5. Since the Cody claims no longer exist, occupancy of the mining site cannot be reasonably incident to mining operations and, unless otherwise authorized, must cease. See 43 CFR 3715.4-3, 3715.7-1; see also Robert C. LeFaivre, 155 IBLA at 140. The standards applicable to ending a use or occupancy set forth in 43 CFR 3715.5-1 require the removal, within 90 days, of all permanent and temporary structures, material, equipment, and other personal property placed on the lands. Timberlin acknowledges that he personally owns the rock crusher and the "bone yard" of spare parts and miscellaneous equipment located on the mining site listed in Exhibit A to the purchase agreement. Therefore, to the extent BLM's decision, citing Timberlin for "failure to have caused the removal of Dominion's equipment," applied to the equipment and materials owned by Timberlin, as noted above, it is affirmed, and BLM properly ordered him to remove that equipment and materials from the site.

[2] BLM also directed Timberlin to begin full reclamation of the site. Regulation 43 CFR 3715.4-3 authorizes BLM to order reclamation of an existing use or occupancy, if the agency determines that the use or occupancy is not reasonably incident. The issue here is whether BLM properly concluded that Timberlin was personally liable for reclamation of the disturbances created by Dominion and its predecessors. Timberlin insists that, although he was an investor, director, and president of Dominion, he never assumed personal responsibility for the corporation's reclamation obligations and that, in any event, those duties were transferred as part of Exhibit C of the purchase agreement. BLM, on the other hand, maintains that Timberlin's status as corporate president at the time Dominion explicitly committed itself to perform the required reclamation and filed a bond guaranteeing that performance, his signature on various corporate documents, and his communications with BLM after Dominion's dissolution establish his individual accountability for the reclamation, and that the transfer of those commitments was rescinded in the termination agreement.

We need not resolve whether the termination agreement annulled the purchase agreement's transfer of reclamation obligations from Dominion, because, even if Dominion had responsibility for reclaiming the site, BLM's attempt to pierce the corporate veil and hold Timberlin individually liable for the corporation's reclamation obligations fails.

The general rule under Arizona law is that corporate status will not be lightly disregarded. Keams v. Tempe Technical Institute, Inc., 993 F. Supp. 714, 723 (D. Ariz. 1997). Although Arizona courts will pierce a corporate veil and impose personal liability if a business is conducted on a personal, rather than a corporate, basis and if the corporation was

established without adequate financial basis, the lack of corporate formalities standing alone does not suffice to warrant piercing the corporate veil. Id. BLM has not shown that Dominion was established without adequate financial underpinnings, nor has it demonstrated that the business was conducted by Timberlin on a personal, rather than a corporate, basis.

In fact, the case file reveals that, after Goodloe's death, Lindsey, Dominion's vice president, rather than Timberlin, became BLM's primary corporate contact, advising the agency of the status of corporate mining-related activities. Timberlin's position as Dominion's president, his signature on various corporate documents, and his communications with BLM after the corporation's demise clearly do not establish that he was conducting the business on a personal basis, nor do they evince any intent on his part to personally adopt the corporation's responsibilities. Accordingly, we reverse BLM's decision to the extent it held Timberlin personally responsible for reclamation of the Cody mining site.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed in part and reversed in part.

Bruce R. Harris
Deputy Chief Administrative Judge

I concur:

Gail M. Frazier
Administrative Judge